IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

Crl.Rev.Pet.No. 552 of 2004(D)

CRA.727/2002 of II ADDL.SESSIONS COURT, ERNAKULAM
CC.5/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, ERNAKULAM

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REVN. PETITIONER: APPELLANT/ACCUSED:

S.P.R.M.SUBRAMANIAN,
PROPRIETOR, SREE LAKSHMI & CORONATION PAPER STORES
XXXVIII/2630, PONOTH LANE, KALOOR, KOCHI-17.

BY ADV. SRI.TOMY THOMAS (KUZHUPPILLY)

RESPONDENTS: RESPONDENTS/STATE AND COMPLAINANT:

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1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, ERNAKULAM.

2. M/S. SUBRAMANIAN @ COMPANY,
P.O. LINK ROAD, ERNAKULAM BY ITS PROPRIETOR,
S.SUBRAMANIAN, THROUGH THE POWER OF ATTORNEY HOLDER
M.C.SWAMINATHAN.

BY ADV. SRI.C.M.NAZAR
SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 552 OF 2004

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Dated this the 8th day of February 2007

O R D E R

The revision petitioner is the accused in C.C. No. 5/2000 (filed on 22.01.1997 and renumbered) of Judicial First Class Magistrate-I, Ernakulam with respect to the offence under section 138 of the Negotiable Instruments Act regarding the dishonour of cheque for Rs. 80672/-. Both the courts below have concurrently held that the accused is guilty of the offence punishable under section 138 of the N.I. Act. The evidence adduced consisted of the testimony of PW1, power of attorney holder of complainant which is a proprietary concern and that of DW1 the proprietor of the respondent firm and the exhibits produced that included the impugned cheque, lawyer notice, acknowledgment, dishonour intimation etc. in support of the case set up by the complainant and Exts. D4 ledger extract of the complainant produced on application by the accused and D2 series and D3 series are receipts and bills produced by the accused.

2. On a consideration of the evidence adduced in the matter, it was found that the remittance claimed by the accused as per Exts. D2 series and D3 series invoices have been duly accounted in Ext.D4 ledger extract. The accused did not produce any of his accounts to substantiate his case that amount due is only a sum of Rs. 4,586/-. The contention of the accused that the amounts due to him from the complainant towards commission for having introduced another firm Messrs. Tom Comics, for the goods supplied, that is, news print and papers supplied to Messrs.Tom Comics has been denied by the complainant. No objective evidence was produced to establish the fact that there was such an understanding with respect to the commission towards supply of papers to Messrs. Tom Comics. The other contention is that inferior quality of paper was supplied to Messrs. Tom Comics and that the accused had to compensate Messrs. Tom Comics. In this regard also no objective evidence was adduced, nor was the functionaries of Messrs. Tom Comics got examined and hence the courts have rightly rejected the above claims of the accused. But entries in April 1996 seen in

Ext. D4 were erroneous entries and the same were transferred to the account of Messrs. Tom Comics which is mentioned in Ext. D4 itself and PW1 has explained the above. The accused also claimed the value of waste paper amounting to Rs. 14,036/-. The same is also not admitted by the complainant and in the absence of any independent evidence, the above claim also was not allowed. It is stated by PW1 that there was credit transactions in between the parties and when the amounts due were demanded blank cheque was given and the same was filled without authority or direction and presented it for collection. The complainant has claimed 24 per cent of interest which is recorded in the sheet annexed to Ext.D4 and the interest has been claimed exactly from the date from which the amounts were due. This claim was not disputed by DW1. On a consideration of the evidence adduced in the matter, I find that the findings entered into by the courts below do not call for interference. The same are confirmed.

3. Considering the plea of the counsel for the petitioner/accused that the sentence of imprisonment may be

modified, the sentence is modified to imprisonment till rising of the court and to pay a compensation of Rs. 80,672/- under section 357(3) Cr.P.C and in default to undergo simple imprisonment for three months. The revision petitioner/accused is granted two months time from today onwards to pay the amount of compensation. The accused shall appear before the Judicial First Class Magistrate, Ernakulam on **09.04.2007.**

The Crl. R.P. is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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